

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 THOMAS A. MOORE,  
12 BOP #03998-298,

13 Plaintiff,

14 vs.

15 ROBERT E. McFADDEN, et al.,

16 Defendants.

17 Civil No. 09cv0771 JAH (CAB)

18  
19 **ORDER DENYING PLAINTIFF'S  
EX PARTE MOTION FOR  
APPOINTMENT OF COUNSEL  
PURSUANT TO  
28 U.S.C. § 1915(e)(1)**

20 [Doc. No. 11]

21 Plaintiff, Thomas A. Moore, an inmate currently incarcerated at the Federal Correctional  
22 Institution located in Butner, North Carolina and proceeding pro se, has filed a civil rights action  
23 pursuant to *Bivens v. Six Unknown Named Fed. Narcotics Agents*, 403 U.S. 388 (1971). Plaintiff  
24 requests appointment of counsel because “the issues involved in this case are complex, and will  
25 require significant research and investigation.” (Pl.’s Mot. at 1.) “[T]here is no absolute right  
to counsel in civil proceedings.” *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360,  
1363 (9th Cir. 1994) (citation omitted).

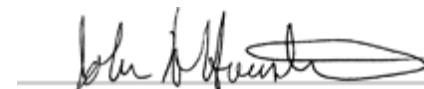
26 “Title 28 U.S.C. § 1915(e)(1) permits the district court, in its discretion, to ‘request an  
27 attorney to represent any person unable to afford counsel.’” *Solis v. County of Los Angeles*, 514  
28 F.3d 946, 958 (9th Cir. 2008) (quoting 28 U.S.C. § 1915(e)(1)). Such discretion may be

1 exercised upon a showing of exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015,  
2 1017 (9th Cir. 1991); *Burns v. County of King*, 883 F.2d 819, 823 (9th Cir. 1989). “To show  
3 exceptional circumstances the litigant must demonstrate the likelihood of success and complexity  
4 of the legal issues involved.” *Burns*, 883 F.2d at 823 (citation omitted). Neither the likelihood  
5 of success nor the complexity of the case are dispositive; both must be considered. *Terrell*, 935  
6 F.2d at 1017.

7 Here, it appears that at this stage of the proceedings, Plaintiff has a sufficient grasp of his  
8 case, the legal issues involved, and is able to adequately articulate the factual basis of his claims.  
9 Under these circumstances, the Court DENIES Plaintiff’s Motion for Appointment of Counsel  
10 [Doc. No. 11] without prejudice at this time.

11 **IT IS SO ORDERED.**

12 DATED: August 7, 2009



13  
14 JOHN A. HOUSTON  
15 United States District Judge  
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